IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8230 of 2004

with

SPECIAL CIVIL APPLICATION No 8231 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT UNIVERSITY

Versus

PATHAK MITALI DUSHYANTKUMAR

Appearance:

1. Special Civil Application No. 8230 of 2004

MR DEVANG NANAATI WITH MR SAURIN MEHTA AND MRS VD NANAVATI for Petitioners

RULE NOT RECD BACK for Respondent No. 1,3-4,6,9

MR ND NANAVATI, SR. ADV. WITH MR AR MAJMUDAR for Respondent No. 2,5,7-8,11-13,15-18

RULE SERVED for Respondent No. 10,14,

MR ND GOHIL, AGP, for Respondent No. 19,21

MR SK JHAVERI SR. ADV. WITH MR PRADEEP PATEL for Respondent No. 20

MS NEHA I JANI for Respondent No. 22

2. SCA No.8231 of 2004
MR DEVANG NANAVATI WITH MR SAURIN MEHTA AND
MRS VD NANAVATI for the petitioner.
MR ND GOHIL, AGP for respondent Nos.1 & 3.
Mr SK JHAVERI, SR. ADV. WITH MR PRADEEP PATEL
for respondent No.2.
MS NEHA I JANI for respondent No.4.

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 03/11/2004

ORAL JUDGEMENT

Some of the respondents who are students have not been served but have left the course and are therefore not interested in the litigation. Rest of the students are served and are being represented through respective counsel.

2. Since common questions of law and facts arise in these petitions, they were heard together and are now being disposed of by this common judgment.

3. For appreciating the controversies arising in these petitions, facts as emerging from Special Civil Application No.8231 of 2004 can be noted.

3.1 Respondent No.2 herein, Parul Institute of Engineering and Technology is a self-financed Institute situated at Limda, Taluka Vaghodia. The said institution was established in the year 2003 for imparting education in Computer Science and Engineering, Electronics and Communication Engineering, Mechanical Engineering, Electrical Engineering and for the said purpose, the institution was approved by the All India Council for Technical Education (AICTE for short) vide its order dated 12th May 2003. The AICTE had given approval to the said institution for 60 seats in each of the said courses aggregating to 240 seats. The respondent No.2 institution is also affiliated with the Gujarat University which is the petitioner in the present petitions. The affiliation was granted to respondent No.2 vide notification dated 7th July 2003. The aforesaid seats in the respondent No.2 Institute were required to be filled up by Joint Admission Committee for Professional Courses (JACPC for short) like all other engineering colleges in the State of Gujarat.

3.2 It is the case of the respondent No.2 Institute that as a self-financed institute, it was entitled to

give admission to eligible students in the 50 per cent Management quota seats and accordingly after following due process for filling up the vacancies, the respondent No.2 Institute had given admissions to 40 students on the basis of their merits. It is not in dispute that the admissions of these students had to be approved by the Gujarat University. The Gujarat University, however, enrolled only 7 out of 40 students in different engineering courses and refused to enrol the remaining 33 students on the ground that they were not meeting with the criteria provided for by the State Government. It was this decision of the petitioner University which came to be challenged by the respondent No.2 Institute before the learned Civil Judge (S.D.), Vadodara in Regular Civil Suit No.318/04. Along with the said civil suit, the plaintiff, respondent No.2 herein, had also prayed for interim injunction by filing appropriate application. By the order dated 26th March,2004 passed below Ex.5 in Regular Civil Suit No.318/04, learned 3rd Joint Civil Judge (SD), Vadodara was pleased to grant an ex-parte injunction in favour of the plaintiff, respondent No.2 herein, and the defendant, the present petitioner was directed to accept enrolment forms of 33 students described in Ex.H(i) who are admitted by the plaintiff Institute and to take examination of those 33 students throughout the entire course and declare the results from time to time till further orders.

3.3 In response to the notice issued by the Joint Civil Judge (SD), Vadodara, the petitioner University appeared before the court and filed its detailed reply and resisted confirmation of ex-parte interim injunction. By the order dated 6th May 2004, the learned Trial Judge, however, allowed application Ex.5 filed by the plaintiff, respondent No.2 herein and confirmed the ex parte ad interim injunction dated 26th March 2004 and made the ad interim order absolute till the final disposal of the civil suit.

3.4 Being aggrieved by the said order dated 6th May 2004, passed by the 3rd Joint Civil Judge (SD), Vadodara, the petitioner herein preferred appeal before the Court of Joint District Judge and Additional Sessions Judge (Fast Track Court No.8), Vadodara. The appellate Court by its judgment and order dated 25th June 2004 was pleased to reject the appeal filed by the petitioner herein and confirmed the order dated 6th May 2004 passed by the learned Trial Judge below Ex.5 in Regular Civil Suit No.318/04.

3.5 Being aggrieved by the said orders passed by the

courts below dated 6th May 2004 and 26th June 2004, the petitioner has preferred the present petition and has prayed for quashing and setting aside the said orders.

4. In Special Civil Application No.8230 of 2004, the facts are similar. Respondent No.20 in the said petition is Sardar Patel Institute of Technology which is a self-financed Institute situated at Vasad, Taluka Anand. The said Institute was established in the year 1997 for importing education in Computer Science and Engineering, Electronics and Communication Engineering, Mechanical Engineering, Civil Engineering, Electrical Engineering, Information Technology, Instrumentation and Control and Aeronautical Engineering with a total capacity of 568 seats for the abovementioned courses. The Institute received approval from AICTE vide order dated 20th August 1997 and affiliation from the Gujarat University vide notification dated 12th December 1997.

4.1 Since respondent No.20 Institute had granted admissions to 18 students which admissions were disputed, the petitioner University did not enrol these students and it was this decision of the Gujarat University which came to be challenged by the concerned students before the 3rd Joint Civil Judge (SD), Vadodara by filing Regular Civil Suit No.335/04. By an ex-parte ad-interim order dated 31st December 2004 passed below Ex.5 in Regular Civil Suit No.335/04, the learned Trial Judge directed the defendant No.1 i.e. the present petitioner to accept the enrolment forms of the plaintiffs and to take examination of those 18 students throughout the entire course and declare their results from time to time till further orders.

4.2 In response to the notice issued by the Trial Court, the petitioner University appeared before the Trial Court and resisted the confirmation of ex-parte interim injunction. The learned Trial Judge, however, by the order dated 6th May, 2004 passed below Ex.5 allowed the application Ex.5 and confirmed the ad-interim order granted earlier by the order dated 31st March 2004 and made the interim relief absolute till the final disposal of the suit. The petitioner herein, being aggrieved by the said order dated 6th May 2004, passed by the Trial Court preferred appeal being Misc. Civil Appeal No.128/04 before the court of Joint District Judge and Additional Sessions Judge, (Fast Track Court No.8) Vadodara. The said appeal, however, came to be dismissed by the appellate Court by its judgment and order dated 25th June, 2004. The petitioner has, therefore, filed the present petition challenging the abovementioned

orders dated 6th May 2004 and 25th June 2004 passed by the courts below.

5. The factual controversy and circumstances leading to the passing of the above orders can be examined at some length, at this stage. Broadly stated, it is the case of the petitioner that the Institute concerned could not have admitted the students in engineering courses since the said students did not fulfill the minimum required educational standards prescribed by the State Government. It is submitted that 33 out of 40 students admitted by the respondent No.2 Institute in Special Civil Application No.8231 of 2004, did not have the minimum 45 per cent marks required in 12 std. examination which standard is prescribed by the State Government and the University is therefore justified in refusing to enrol the said students. Similarly, it is canvassed that the 18 students who were plaintiffs before the Trial Court out of which the proceedings of Special Civil Application No.8230 of 2004 is arising also did not possess the minimum of 45 per cent marks in 12 std. examination as specified by the State Government for seeking admission to engineering courses.

6. By resolution dated 6th May 2003, the State Government formulated rules for granting admission to engineering degree and diploma courses as well as in pharmacy degree (B.Pharm) and pharmacy diploma courses in the State of Gujarat to be made applicable from the academic year 2003-04. As per rule 4 of the said Rules minimum educational qualification was prescribed and it included passing of 12th std. examination with specified subjects. Rule 5 of the said Rules provided that the students belonging to Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes must have a minimum of 40 per cent marks in theory papers in the specified subjects mentioned in rule 4. For the general category and other categories of students, the minimum required standard was 45 per cent in place of 40 percent required for the above mentioned reserved category of students.

6.1 Apart from providing minimum qualifying marks to be obtained for seeking admission to Engineering and Pharmacy courses, the said set of rules also provided for detailed procedure to be adopted for granting of admissions to self-financed institutions in the State of Gujarat.

6.2 By a resolution dated 9.5.03, certain additions were made by the Government in its earlier resolution

dated 6.5.03. Certain minor modifications were also made by a resolution dated 12th May 2003 with which this Court is not directly concerned in the present petition.

6.3 By a resolution dated 1st July 2003, the Government of Gujarat provided for certain fee structure to be followed by the self-financed Institutions and provided for the maximum ceiling of fees to be charged by such Institutions for different courses and provided for two separate limits which such Institutions could charge as fees in case of general seats as compared to seats filled up by the management. Simultaneously, the said resolution also provided that 85 per cent of the total seats in each course shall be treated as general seats to be filled in accordance with the merit of JACPC and the self-financed Institutions were permitted to fill up 15 per cent of the seats on their own. It was provided that while filling up 15 per cent of the seats also the Institution shall strictly maintain the principles of transparency through wide publicity and maintain merit.

7. The above two Government Resolutions dated 6th May 2003 and 1st July 2003 came to be challenged before this High Court along with certain other resolutions of the Government pertaining to the same subject matter and this Court in a group of petitions was pleased to admit the petitions and grant certain interim orders. It may be noted at this stage that there is virtually no dispute about the fact that the entire focus of challenge in the said group of petitions was with respect to the fee structure set out by the State Government in its resolution dated 1st July 2003 as well as against the process of granting admissions to such self-financed Institutions which provided for allotment of only 15 per cent seats for the management quota. After considering the rival submissions, learned single Judge while admitting those petitions by the order dated 28/29th August 2003, was pleased to pass the following order:

"17. In view of the prima facie observations, I am inclined to pass the following orders:

(1) All these petitions deserve to be admitted and hence RULE.

By way of interim orders it is directed that-

(a) The Government Resolution vide No.MCG-1003-1869-J dated 28-5-2003 or such Government Resolution fixing the fee

structures shall remain stayed qua the concerned petitioner colleges on condition that the concerned petitioner colleges file undertaking on or before 2-9-2003 to be abided by and to comply the following conditions:

(i) That the concerned petitioner colleges shall not collect the fees from the students who are granted admission either in the Government Quota or in the Management Quota more than the amount as prescribed and shall collect the fees in the manner provided both as per the said Resolution dated 28-5-2003 or such other concerned resolution.

However, the collection of such amount of fees, etc., shall be subject to the finalization of fee structures by the Committee which may be constituted as per the decision of the Apex Court in the case of "Islamic Academy of Education" (supra) (hereinafter referred to as the "Special Committee".)

(ii) That it will be open to the concerned petitioner colleges to take bond from the students while giving admission to the effect that he/she shall pay up the balance amount of fees within one month, if required, as per the finalization of such fee structures by the aforesaid Special Committee.

(iii) That the concerned petitioner colleges shall refund the balance amount to the students within one month, in the event of fee structures being reduced by the aforesaid Special Committee than the fees provided as per the resolution dated 28-5-2003 or such resolution.

(iv) That in the event of any delay in finalization of fee structures of the concerned petitioners by the aforesaid Special Committee, beyond one month prior to the last date of submission for appearing in the last examination of such study course, it would be open to the concerned petitioner colleges to collect

the difference of amount by cheque/demand draft, if any, between the fees proposed to be approved and the fees actually collected from the concerned students, but such amount shall be deposited by the concerned petitioner colleges with this Court within one week from the date of such collection and the concerned students shall also be intimated accordingly.

(v) That all payments shall be received by the petitioner colleges from the students preferably by cheque/demand draft/pay order and no payment shall be received by the petitioner colleges without issuance of proper receipt, to the concerned students.

(b) The Government/University Rules for admission for the year 2003-04 for the concerned study courses shall operate qua 50% of the approved intake capacity/seats of the concerned petitioner colleges and it will be left to the competent authority of the Government to fill up 50% of the aforesaid seats as per the policy of the State Government prevailing in the State for reservations of all category/class or other such policy in the matter of grant of admission of students to such course. However, such students who are admitted by the Government on 50% seats shall have to be abided by the direction (a) above and the concerned petitioner colleges shall also be at liberty to insist for consequential bond etc., as per the aforesaid direction (a).

(c) The Government/University Rules for admission for the year 2003-04 for such study courses shall remain stayed for the 50% of the approved intake capacity/seats of the concerned petitioner colleges on condition of petitioner colleges filing undertaking to be abided by and to comply the following conditions:

(i) That the petitioner colleges shall give admission to the concerned eligible

students as per the comparative merit list prepared by the Committee constituted as per the Government Resolution dated 3-5-2003 or any other such Committee as the case may be.

(ii) That the petitioner Colleges shall be at liberty to choose or give preference to the students of equal merit as per the aforesaid common merit list. Such students who are admitted by the petitioner colleges shall also have to be abided by the direction (a) and the concerned petitioner colleges shall be at liberty to insist for consequential bond etc., as per the aforesaid direction (a).

(d) The State Government shall take steps for constitution of aforesaid committee as per the decision of the Apex Court preferably within a period of one month from today.

(e) After the constitution of such committee, the concerned petitioner Colleges shall apply to the committee for approval or finalization of the fee structure and it is hoped that such committee shall finalize the fee structures within three months from the date of receipt of such proposal.

(f) Any decision of 15% quota of the management by the Director of Technical Education or Higher Education shall not operate further, in view of the 50% quota provided as per the direction (c).

(g) The Secretary, Education Department of the State Government shall mark at least one Officer not below the rank of Deputy Director, Education for taking necessary steps for verifying the compliance of the present interim order and for bringing it to the notice of the Court in case any breach or contravention is made by any person concerned.

(h) So far as the petitions of SCA No.8131/2003 and SCA No.8476/2003 is concerned, the same are pertaining to

B.Ed. Course and, therefore, the aforesaid all directions shall apply to such petitioners also with the modification that instead of "Government Resolution dated 28-5-2003" it shall stand substituted by the "Government Resolution No.NCG/1103/2112/KH dated 6-6-2003" and instead of "Government Rules for admission of 2003-04" the words shall stand substituted by "Rules framed by the concerned University for admission to study courses".

Further direction (c) would operate in the same manner, except that in place of 50% it will be 35% since 15% seats are already filled up and the comparative merit of the students in the merit list prepared by the University referred to in the Government Resolution dated 6-6-2003 shall be considered for admission. It would also be open to the present petitioner colleges, after giving undertaking, to take bond or collect the difference and deposit the same, if such contingencies arise, from the students who are already granted admission either in the Government quota or in the management quota.

(i) It would be open to the State/concerned University/concerned Authority to allow any other self-financed colleges to fill up the seats of study courses for the concerned Colleges for the academic year 2003-04 in the same manner as similarly situated persons like petitioner colleges, if such colleges agree to be abided by the same condition as mentioned in all earlier directions but such undertaking or deposit of the amount shall be to the State Government/concerned University/concerned Authority, as the case may be, with the further stipulation that in the even of any of the breach or terms of the undertaking, it would be competent for the State Government /concerned University/ concerned Authority to take steps for de-recognition or non-affiliation, as the case may be.

(j) Any action pursuant to the interim order by both the sides shall be subject to

further or final order which may be passed by this Court.

(k) That the admission process which are subject matter of these petitions be finalized at the earliest by all concerned, in accordance with law.

(l) All Ad-interim order pending the petitions passed earlier than the present order would not survive and shall stand modified by this order."

The said interim order passed by the learned single Judge on 28/29th August 2003, came to be challenged by the aggrieved parties and the Division Bench of this Court by its order dated 5th September, 2003 passed in Civil Application No.6194 of 2003 in LPA No.863/03 was pleased to confirm the interim order passed by the learned single Judge subject, however, to certain minor modifications. The operative portion of the order of the Division Bench in the abovementioned Civil Application reads as follows:

"4. Accordingly, operation and implementation of the Government Resolutions dated May 6, 2003 and July 1, 2003 is stayed on the following conditions:

(i) The Management Committee shall open a Bank Account in the State Bank of India having its Branch in the High Court of Gujarat Complex, Sola, Ahmedabad, within eight days from today.

(ii) The Joint Admission Committee, which is to collect initial fees of Rs. 15,000.00 (Rupees fifteen thousand only) from each concerned student shall remit the amount collected from each student to the above mentioned branch of the State Bank of India and deposit in the account, which may be opened by the respective institute/college.

(iii) The Association of Management shall notify fee structure in respect of each concerned institute/college to the Joint Admission Committee for Professional Courses during the course of the day.

(iv) The students opting for the concerned

institute shall pay/deposit fees in the above mentioned bank account of concerned institute/college as per its fees structure by Demand Draft/Banker's Cheque after deducting the amount of Rs. 15,000.00 paid to the Joint Admission Committee for the Professional Courses.

(v) The Demand Draft/Banker's Cheque shall be deposited by the concerned student in the Account of the concerned institute/college which is going to be opened in the above mentioned Bank pursuant to this order.

(vi) After the amount is deposited by the student concerned in the Account of the concerned institute/college, the same shall be at liberty to withdraw the amount of fees prescribed by the Government in Government Resolution dated July 1,2003 i.e Rs. 21,000.00 per annum per student so far as Engineering Degree Course is concerned; Rs. 21,000.00 per annum per student so far as Degree Pharmacy Course is concerned; Rs. 21,000.00 per annum per student so far as Architecture Degree Course is concerned; Rs. 15,000.00 per annum per student so far as Diploma Engineering Course or Diploma Pharmacy Courses is concerned.

(vii) The balance amount of the fees paid by the student concerned shall remain with the Bank which shall not be permitted to be withdrawn and the said amount may be invested by the Bank in the fixed deposit so that the amount earns interest.

(viii) The aforesaid deposit of the balance amount of fee shall be subject to approval of final fees structure of the concerned institute/college by the Committee to be appointed as per the directions of the Supreme Court in Islamic Academy of Education & Anr. V. State of Karnataka & ors.JT 2003 (7) SC 1.

(ix) Each of the institutes/colleges is directed to file an undertaking before

this Court within eight days from today stating that if the fees structure of the concerned institute/college is higher than the fees which may be fixed by the Committee to be appointed pursuant to the above mentioned decision, the concerned institute/college shall refund the excess amount received by the same from the student concerned within one month from the day of finalisation of fees structure by the Committee.

(x) If the fees structure suggested by the concerned institute/college is not finalised by the Committee to be appointed as per the judgement of the Supreme Court in Islamic Academy of Education & Anr. (supra) within six months, it would be open to the concerned institute/college to apply to the Court for permission to withdraw further amount.

(xi) So far as institutions imparting education in MBA, MCA, PGDBM are concerned, they shall also be governed by the directions mentioned hereinabove and shall comply with the directions accordingly. The fees structure for these courses would be as under:-

Rs. 21,000.00 per annum per student for MBA Course.
Rs. 21,000.00 per annum per student for MCA Course.
Rs. 21,000.00 per annum per student for PGDBM Course

(xii) The institutions imparting education in MBA, MCA, OGDBM Courses shall make their fees structure available to the Joint Admission Committee for Professional Courses by tomorrow.

5. In the matter of admission, directions given by the learned Single Judge in the impugned order are confirmed subject to the following conditions:-

a. The concerned institute/college shall forward the applications for admission received by it directly from the students on management quota to the Joint Admission Committee for Professional

Courses by tomorrow.

b. The applications which may be forwarded by the Management Committee, as indicated above, shall be considered by the Joint Admission Committee for Professional Courses for admissions on the available seats.

Subject to the aforesaid directions, this Civil Application stands disposed of. Rule is discharged. There shall be no order as to costs."

7.1 Once again, the said order of the Division Bench of this Court came to be further challenged before the Hon'ble Supreme Court and the Special Leave Petition came to be disposed of by the order dated 15th December 2003 by which the Hon'ble Supreme Court was pleased to observe that by the time the decision in Islamic Academy of Education case (reported in 2003 (6) SCC 697) was decided, certain directions had been issued by the Government pursuant to which 15 to 20 per cent of seats have already been filled up by the Management and it would not be appropriate to disturb their admissions if such students are otherwise qualified as per the standard prescribed by the Medical Council of India in Medical Colleges or any other such or similar body prescribing standard for admission in respect of other institutions. It was further observed that no entrance examination has been held in the State of Gujarat and the students are being admitted on the basis of their marks obtained in 12th std. examination and subject to the standard prescribed by the relevant medical or technical education council or some other similar body and in view of the fact that the Supreme Court had allowed the Management to fill up the seats upto 50 per cent, the said 50 percent will include the 15 to 20 seats which have already been admitted. It was further observed that if nominations have been made either by the Management or by the Joint Admission Committee before 30th September 2003, the same shall be treated as having complied with the directions issued by the Supreme Court in MCI v. Madhu Singh's case. It was further provided that no fresh admissions shall be made until the disposal of the proceedings before the High Court. While disposing of the petitions, the Hon'ble Supreme Court noted that the Court have not specifically gone into the merits of the case inasmuch as the proceedings are pending before the High Court and they are to be decided by the High Court appropriately after examining all aspects and any expression or opinion

of this aspect would not be in the interest of justice.

7.2 To complete the narration of events, it may be noted that a Division Bench of this Court by its order dated 28th April 2004, was thereafter pleased to dispose of the entire group of appeals, being LPA No.862 of 2003 and connected matters. In the said order dated 28th April 2004, the Division Bench was pleased to observe that during the course of the arguments, a consensus is arrived at between both the sides by which the Government Resolutions listed at Items 1 and 2 are agreed not to be relied upon either for admission or for fixing fee structures, so far as only the appellants are concerned and it is further agreed that the undertakings of the appellants given to the Court pursuant to the interim orders shall continue. It may be noted that the Government Resolutions dated 6th May 2003 and 1st July 2003 were part of the list submitted to the Court and were mentioned at Item No.1 which were agreed not to be relied upon either for admission or for fixing fee structures so far as the appellants in the said appeals were concerned. The Division Bench was thereafter pleased to observe that in view of the fact that in the main petitions, the petitioners had challenged the said resolutions (those mentioned at Item No.1 and 2 in the order of the Division Bench) in respect of which the consensus is arrived at to the effect that the State shall not rely upon them for the academic year 2003-2004 either for admissions or for fixing the fee structures so far as the appellants are concerned, the main petitions as well as appeals will not survive. Consequently, the Division Bench by its order dated 28th April 2004 was pleased to dispose of the group of Special Civil Applications along with the group of Letters Patent Appeals. While doing so, the Division Bench also provided that the parties will abide by the terms agreed to between them as reproduced in the order.

8. Appearing for the petitioner, Gujarat University, in these petitions, learned counsel Shri Nanavati has taken me through the record of the case and has on the basis of the material submitted that the courts below have gravely erred in granting the injunction in favour of the institution as well as students. He has submitted that the students concerned did not fulfill the minimum standard prescribed by the State Government and that therefore, the courts below erred in directing the Gujarat University to accept their enrolment which would be de hors the Rules. It is contended that the Trial Court did not have the power or authority to give such a direction at an interim stage. The counsel for the

petitioner has submitted that the Trial Court erred in granting ex-parte mandatory injunction. It is his case that the courts below ought not to have granted injunction in favour of students as well as institution concerned since the students did not possess the minimum marks prescribed by the State Government for seeking admissions. He submits that the courts below have ignored the well-known parameters of granting of interim injunction.

8.1 It is contended by the counsel for the petitioner that by granting the interim injunction, the entire suits have been decreed and such an injunction ought not to have been granted especially in the facts of the present case.

8.2 By referring to different portions of the order dated 28th/29th August 2003 passed by the learned single Judge in a group of petitions being Special Civil Application No.9800 of 2003 and allied matters, it is submitted that what was under challenge before the learned single Judge in the said group of petitions was only the fee structures prescribed by the State Government and the prescription of 15 per cent management quota emerging from the said circulars dated 6th May 2003 and 1st July 2003. It is canvassed that the prescription of 45 per cent minimum marks in the theory papers of the relevant subjects for general category of students in order to seek admission to the technical course was never under challenge in any of the litigations. He, therefore, submits that the interim order passed by the learned single Judge as confirmed by the Division Bench, of course with certain modifications, by the order dated 5th September, 2003, should be viewed in this background and by no stretch of imagination, can it be suggested that either the petitioners therein desired to dispute the minimum standard of marks prescribed by the State Government for seeking admission or the Court intended to stay the provisions contained in the resolution dated 6th May, 2003. He, therefore, submits that the interim orders passed by this Court should be construed and interpreted in the background of the challenge before the Court and it is not possible to consider the effect of the interim order in isolation.

8.3 It is also contended that similarly the final order passed by this Court on 28th April 2004, while disposing of the Letters Patent Appeal No.863/03 and allied matters including the Special Civil Applications out of which the said Letters Patent Appeals arose should be viewed from the angle of the challenge in the main

petitions itself and not in isolation.

8.4 The counsel for the petitioner further submitted that it is by now well settled that the State Government can prescribe standards higher than and in addition to those prescribed by the Council set up by the Central Government for regulating the technical courses. It is submitted that the prescription of 45 per cent marks as minimum requirement for seeking admission to Engineering Courses prescribed by the State Government, therefore, cannot be objected to. It is suggested that in order to maintain the standard of higher education, it is always open for the State Government to prescribe higher standards for seeking admission as long as they do not conflict with the prescription of standard prescribed by the Central Government or its agencies under the provisions of relevant rules and regulations.

8.5 From the order dated 31st August 2004, passed by this Court while admitting these petitions, it is pointed out by the learned counsel for the petitioner that the learned Judge had specifically provided that the students concerned shall be allowed to prosecute the studies, but the declaration of the results and prosecution of further studies shall be without creating any additional right in favour of the students concerned and the students shall not be entitled to claim any additional benefit on the ground of declaration of results or on the ground of being allowed to prosecute studies. It is, therefore, pointed out that even while admitting the petition and maintaining the interim injunction granted by the courts below, the learned single Judge had taken care to provide that no further equities are created in favour of the students. He, therefore, submits that the present petition should be allowed and the orders passed by the courts below should be set aside since the same are passed without appreciating the full facts.

8.6 It is also submitted that the mere fact that the students were allowed to prosecute studies pursuant to the interim orders passed by the courts should not weigh with the court at the time of deciding the issues finally in the present petition. It is further contended that under no circumstances, the courts below could have passed the orders since the effect of such orders would be of allowing the civil suits without proper adjudication of the issues.

8.7 It is further contended by the learned advocate for the petitioner that the State had sufficient powers to prescribe the qualifying standards and the same could

also have been done in exercise of its executive powers. He has drawn my attention to Article 162 of the Constitution of India and contended that executive powers of the State extend to the matters with respect to which the Legislature of the State has power to make laws. He, therefore, submits that considering Entry 25 in List III of Schedule 7 to the Constitution, the State Government has the power to legislate with respect to standard of higher education and that therefore, the State could as well have provided for the said standard by issuing executive instructions as long as there was no statutory rule occupying in the field.

9. Reliance is placed on the decision in the case of State of T.N. v. S.V.Bratheep, (2004) 4 SCC 513 by the learned counsel for the petitioner to contend that the State Government can prescribe standard higher or in addition to those prescribed by AICTE and it is open for the State Government to prescribe certain percentage of marks in related subjects higher than the minimum in the qualifying examinations prescribed by the AICTE as eligibility criterion for appearing in common entrance test. By referring to the said decision, the learned counsel has pointed out that in the said decision of the Hon'ble Supreme Court also, standards were prescribed by the State Government through executive instructions and not by framing statutory rules.

9.1 Reliance is placed on the decision of a Division Bench of this High Court in the case of Thakkar Dharatiben Haribhai v. State of Gujarat, 2000 (3) GCD 2406 (Guj). It is pointed out that the Division Bench of this High Court in the said decision had upheld the executive instructions issued by the State Government prescribing higher standards to be fulfilled for seeking admission in Homeopathy (Degree Course). Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of Dr.Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 wherein also the Hon'ble Supreme Court had observed that both the Union as well as the States have the power to legislate on education including medical education, subject inter alia, to Entry 66 of List I which deals with laying down standards in institutions of higher education or research and scientific and technical institutions as also carrying on such standards. It was further observed that a State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. It was, however, observed that the State cannot while controlling education in the State impinge on standards in institutions for higher education

because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. The learned advocate for the petitioner has also drawn my attention to the observations made by the Hon'ble Supreme Court in para 82 of the said judgment wherein it is observed that "the State can make adequate provisions on the topic by resorting to its legislative power under Entry 25 of List III as well as by exercising executive power under Article 162 of the Constitution of India read with Entry 25 of List III".

9.2 Commenting on the decision of the Hon'ble Supreme Court in the case of State of T.N. v. Adhiyaman Ed. & Research Institute, (1995) 4 SCC 104, the counsel for the petitioner submits that the said decision has been noted and distinguished in the later decision of the Hon'ble Supreme Court in the case of State of T.N. v. S.V.Bratheep (supra). He also submits that a Division Bench of this High Court in the case of Thakkar Dharatiben Haribhai (supra) also took note of the decision of the Hon'ble Supreme Court in the case of State of T.N. v. Adhiyaman Ed. & Research Institute (supra), but in view of the decision of the Hon'ble Supreme Court in Dr.Preeti Srivastava (supra), upheld the action of the State Government to issue instructions prescribing higher standards for securing admission in Homeopathy Institution.

9.3 Relying on the decision of the Hon'ble Supreme Court in the case of Guru Nanak Dev University v. Parminder Kr. Bansal, (1993) 3 SCC 401, the counsel for the petitioner submits that even in case of students seeking to pursue higher education, ill-conceived sympathy should not be allowed to govern the grant of interlocutory orders.

9.4 Based on the decision of the Hon'ble Supreme Court in the case of Central Board of Secondary Education v. Nikhil Gulati, (1998) 3 SCC 5, it was contended that the courts below ought not to have granted interim injunction by which ineligible students were made to enrol with the University.

9.5 Relying on the decision of the Hon'ble Supreme Court in the case of Union of India v. Modiluft Ltd., (2003) 6 SCC 65, it is contended that interim relief which finally allows the civil suit could not have been granted.

9.6 Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of Metro Marins v. Bonus Watch Co. (P) Ltd., (2004) 7 SCC 478 in support of the contention that mandatory interim injunction should be granted only in exceptional cases and in the present case the Trial Court had granted ex-parte mandatory interim injunction without proper justification.

9.7 Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of Divisional Controller, KSRTC v. Mahadeva Shetty, (2003) 7 SCC 197, in which it is observed that a decision often takes its colour from the question involved in the case in which it is rendered and the scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. Based on these observations, it is urged that interim orders passed by this Court in which notifications dated 6th May 2003 and 1st July 2003 were challenged should be viewed from the angle of the challenge made in the petitions and not in isolation. It is contended that the interim orders passed by this Court in the said group of petitions should be confined only to the question of fee structures and the percentage of management quota seats provided for by the Government in the said resolutions and the interim orders passed by the learned single Judge and the Division Bench never intended to stay the effect of the minimum standard of marks prescribed by the State Government for seeking admission to engineering institutions.

10. Appearing for the respondent No.2 Institution in Special Civil Application No.8231 of 2004, learned counsel Shri S.K.Jhaveri has submitted that the Hon'ble Supreme Court in the case of TMA Pai Foundation v. State of Karnataka, (AIR 2003 SC 355) has held that right to impart education is a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. He, therefore, submits that there can only be reasonable restrictions exercising such a right that too within the parameters of clause 6 of Article 19 of the Constitution of India. It is contended that such a restriction can be imposed only by way of proper legislation and the Government cannot issue executive instructions which would curtail the fundamental right of a citizen. It is further contended that once the Parliament passes the law, the State cannot pass any other law inconsistent with such a law of the Parliament.

10.1 Counsel for the respondent No.2 has drawn my attention to the statement of objects and reasons for

enactment of the All India Council For Technical Education Act, 1987 and has also pointed out the provisions of section 10(c)(i) and (ii) of the said Act and canvassed that in view of these provisions and in view of the purpose for creating such provisions, it was not open for the State Government, that too by way of executive instructions to prescribe any standards different from those provided for by the AICTE.

10.2 Relying on the decision of the Hon'ble Supreme Court in the case of Union of India v. Naveen Jindal, AIR 2004 SC 1559, it is contended that to impose reasonable restrictions curtailing the fundamental rights the State must formulate legislation. The learned counsel has also placed reliance on the observations made in the minority view of Hon'ble Mr Justice S.B.Sinha in the case of Modern School v. Union of India, (2004) 5 SCC 583, wherein it is observed that any control or regulation over education or educational institution must be imposed only by legislative act and not by any executive instructions.

10.3 The learned counsel for respondent No.2 placing reliance on the decision of Brahmo Samaj Education Society v. State of West Bengal, 2004 AIR SCW 3189, points out that in the above mentioned decision, the Hon'ble Supreme Court had observed that though the State can regulate appointment by prescribing requisite qualification, right of institution to appoint a candidate of its choice from amongst qualified candidates cannot be restricted. It is, therefore, submitted that likewise, the right of the self-financed institutions to give admission to the students cannot be interfered with by the Government.

10.4 It is further contended by the learned counsel Shri Jhaveri that the order dated 28th April 2004 of the Division Bench passed in group of petitions namely, Letters Patent Appeal No.862/03 and allied matter is clear and unequivocal. It is submitted that in the said order, it is clearly noted that the resolutions mentioned therein (which include Government Resolutions dated 6.5.03 and 1.7.03) were agreed not to be relied upon either for admission or for fixing fee structures so far as the appellants are concerned. He submits that indisputably, the institutions involved in these petitions were appellants before the High Court in the said group of LPAs. He, therefore, contends that when the resolutions were agreed not to be implemented against the institutions in question, it is not possible to rely upon the said resolutions for any purpose whatsoever

including for requiring the Institutions to adhere to the minimum passing marks of 45 per cent as included in the said resolution.

10.5 Learned counsel has further submitted that the present petitions are directed against the interlocutory orders passed by the two courts below. He submits that when the courts have come to concurrent findings, this Court in exercise of powers under Article 226 and 227 of the Constitution would not interfere with the conclusions arrived at by the courts below.

10.6 Learned advocate Shri Jhaveri has also submitted that nearly 130 seats have remained vacant on the basis of the minimum standards fixed by the State Government and it, therefore, shows that the standards prescribed by the Governments were not achievable and attainable.

11. Appearing for the students along with briefing counsel, learned Senior Counsel Shri N.D.Nanavati has submitted that though the State Government has certain powers to regulate laws regarding education including technical education, medical education and Universities subject to the provisions of Entries 63 to 66 in List I and also vocational and technical training of Labour under Entry 25 in List II to Schedule 7 of the Constitution read with Article 246 of the Constitution of India, the said powers can be exercised only by way of legislation and no standards can be prescribed by the State Government by executive fiat. It is urged that especially when AICTE which is a body created by the Central Government under the provisions of the All India Council for Technical Education Act and the AICTE has laid down certain minimum qualification required for admission to engineering courses, it was not possible for the State Government to lay down any different standards through the Government Resolution and such standards could have been laid down, if at all, only through the act of legislation.

11.1 Shri Nanavati also submits that the Government resolution dated 6.5.03 and 1.7.03 are no longer in existence at least in so far as the present institutions are concerned since before the Division Bench, the State Government has clearly agreed not to rely upon these resolutions for the purpose of admission or for fixing fee structures.

12. Learned counsel Shri Nanavati appearing for the petitioner has, in reply to the submissions made by the learned counsel for the respondents mainly pointed out

that it is not necessary that in order to lay down any standard in education, the State Government must act through the legislation and the Government can also issue executive instructions by virtue of the provisions of Article 162 of the Constitution of India and such exercise of powers by the Government would not be improper as long as the executive instructions do not operate in the field occupied by any legislation.

12.1 Learned counsel for the petitioner has placed reliance on the decision of Bishambhar Dayal Chandra Mohan v. State of U.P.,(1982) 1 SCC 39 wherein the Hon'ble Supreme Court had observed that so long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. Reliance is also placed on the decision in the case of Kurali Khandsari Udyog v. Excise Commr. and Controller of Molasses, (2004) 4 SCC 580 in which the Hon'ble Supreme Court has observed that even assuming that the rule making power did not enable the Government to make such a rule, such a restriction could always be imposed by virtue of Article 162 of the Constitution. Reliance is also placed on the decision in the case of I.T.C. Bhadrachalam Paperboards v. Mandal Revenue Officer, (1996) 6 SCC 634, wherein the Hon'ble Supreme Court has observed that where the matter is not governed by a law made by the Competent Legislature, the executive can act in its executive capacity since the executive power of the State extends to the matters with respect to which the Legislature of a State has the power to make laws. Reliance is also placed on the decision in the case of Dr.Preeti Srivastava (supra) to point out that the State can make adequate provisions on the topic by resorting to its legislative powers as well as by exercising executive powers under Article 162 of the Constitution of India read with Entry 25 of List 3.

13. Having noted the submissions on behalf of the rival parties and having perused the material on record, the preliminary question that is required to be considered and decided in these petitions by this Court is whether the courts below were justified in granting interim injunction as prayed for by the plaintiffs or whether the interim injunction granted in favour of the Institutions and students are required to be vacated.

14. Before proceeding to examine these questions, it would be useful to note two decisions of the Hon'ble Supreme Court which would have some bearing on the controversies arising in these petitions. In the case of

Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675 the Hon'ble Supreme Court held that the powers under Article 226 and 227 of the Constitution of India is always in addition to the revisional jurisdiction conferred and the curtailment of revisional jurisdiction of the High Court under section 115 of the Code of Civil Procedure by Amendment Act 46 of 1999 does not take away and could not have taken away the constitutional jurisdiction of the High Court to issue a writ of certiorari nor is the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. While saying so, the Hon'ble Supreme Court has laid down certain broad principles for exercising powers under Article 226 and 227 of the Constitution of India and made following observations:

"38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act 46 of 1999 with effect from 1.7.2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for

keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or gave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) a patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may

become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

15. In the case of Deoraj v. State of Maharashtra, 2004 AIR SCW 2134, the Hon'ble Supreme Court laid down principles for grant of interim relief which would tantamount to granting of final relief itself. In para 12 of the judgment, the Hon'ble Supreme Court has made the following observations:-

"12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing thee would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such

> cases, the availability of a very strong prima facie case - of a standard much higher than just prima facie case, the considerations of f balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Curt may put the parties on such terms as may be prudent."

16. From the perusal of the ex-parte order passed by the Trial Court, it appears that the Trial Court was actuated by the fact that 33 students are denied enrolment by the University and if they are allowed to prosecute their studies and sit in the examination, no harm would be caused to the defendants and on the contrary the academic future and career could be adversely affected and they would be deprived of their fundamental rights of education. I am of the opinion that the Trial Court's justification for granting ex-parte mandatory interim relief was not germane to the issues arising in the matter. It is difficult to understand what was the reason to grant such an ex-parte mandatory interim relief even without issuing notice to the defendants. Merely because the students were desirous of pursuing higher education by itself could not have been the ground to grant ex-parte mandatory relief of enrolling these students and to permit them to sit in the examination to be conducted by the University.

17. In the impugned order dated 6.5.04 while confirming the interim injunction granted earlier, the Trial Court in my view did not properly address to the issues arising in the civil suits. Primarily, the Trial Court appears to be guided by the fact that the University failed to justify the reasons for refusing enrolment of the students concerned. In the impugned order, the Trial Court has observed that it is for the

Court to consider as to whether the defendant University was prima facie justified in refusing enrolment to 33 students or not. It is also observed that the defendant University has not been able to, prima facie, satisfy the court that students who were having marks higher than the students concerned are refused admission by the plaintiff Institute. The Trial Court on the basis of its finding that the Institute has granted admission strictly on merits, relying on the decision of the Hon'ble Supreme Court in the case of State of T.N. v. Adhiyaman Educational & Research Institute (supra) was of the opinion that the plaintiff had made out a prima facie case and also balance of convenience was in favour of the plaintiffs and that the students would suffer irreparable loss if interim relief is not granted. In my considered view, the reasons set out by the Trial Court for confirmation of interim injunction also would not satisfy the test laid down by the Hon'ble Supreme Court in the case of Deoraj v. State of Maharashtra, (supra) for grant of interim relief which would amount to granting of final relief. The Trial Court was conscious of the fact that the students in question did not secure 45 per cent marks as required by the State Government in its resolutions.

18. Likewise, the appellate Court also, in my view, did not fully appreciate the relevant aspects of the matter before confirming the order passed by the Trial Court. The main reason which appears to have weighed with the Appellate Court in rejecting the appeals of the present petitioner is that the resolutions dated 6.5.03 and 1.7.03 were stayed by this Court in a group of petitions by orders dated 28/29th August 2003 and 3rd September 2003. In my view, the appellate Court was not justified in coming to the said conclusion. The petitions filed before this Court in which the said interim order came to be passed primarily challenged the authority of the State Government to lay down the fee structures to be adhered to by the self-financed Institutions. The challenge also appears to be with respect to the quota of seats earmarked for the Management to be filled up. There does not appear to be any dispute about the fact that the prescription of minimum qualifying marks of 45 per cent in the relevant subjects laid down by the Government through issuance of said circulars was never under challenge before the High Court.

19. In view of the discussion hereinafter and also in view of the fact that these petitions are filed at the interlocutory stage where the civil suits are still

pending, it is neither proper nor advisable on my part to comment on the rival submissions with respect to the power of the State Government to prescribe the minimum standards for pursuing higher education. Firstly, the said prescription through the relevant circulars was never under challenge before the courts below. Secondly, I am of the opinion that even otherwise, the courts below ought not to have granted the interim injunction as prayed for in view of the fact that there was great deal of dispute and debate possible about the rights of the students to seek enrolment and about the right of the Institution to enrol such students without fulfilling the criterion of minimum 45 per cent marks in the relevant subjects. Without any clear-cut right in favour of the students, the courts below ought not to have gone to the extent of passing interim injunctions which would ultimately not be possible to recall even at the conclusion of the trial. In essence, therefore, the courts below have completely erred in virtually allowing the civil suits and such a course of action would have been possible only if the parameters for grant of such an injunction were fulfilled. As noted earlier, the Hon'ble Supreme Court in the case of Deoraj v. State of Maharastra (supra) held that situation may emerge where granting of interim relief would tantamount to granting the final relief itself and there would be situations where withholding of interim relief would tantamount to dismissal of the main petition itself, for by the time the main matter comes up for hearing, there would be nothing left to be allowed. In such cases, the availability of a very strong prima facie case - of a standard much higher than just prima facie case, considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the court the court to grant interim relief though it amounts to granting the final relief. It was also observed that such would be rare and exceptional cases and the court would be justified in granting such a relief if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice resulting in injustice being perpetuated throughout the hearing.

20. Thus, it was absolutely essential before the courts below could have granted the interim injunction that it was found as a matter of fact that the plaintiffs had a very strong prima facie case and not merely a prima facie case and that this coupled with the considerations of balance of convenience and irreparable injury had forcefully tilted the balance of the case totally in favour of the plaintiffs. I find that the courts below

nowhere considered these important aspects of the matter before granting interim injunction. As noted earlier, the question of the rights of the students to pursue higher education despite having failed to meet the minimum requirement of 45 percent marks in the relevant subjects as prescribed by the State Government was itself doubtful. The courts below could not have ignored the overwhelming judicial opinion in this regard, reference to which has been made in the earlier portion of this judgment. There was, therefore, no question of a very strong prima facie case having been built up by the plaintiffs. Ordinarily, therefore, this Court would have no hesitation to interfere with the orders passed by the courts below despite the narrow jurisdiction available to this Curt in exercise of powers under Article 226 and 227 of the Constitution of India as observed by the Hon'ble Supreme Court in the case of Surya Dev Rai (supra).

21. The question, however, has taken a sudden and curious twist. Though not before the Courts below, I cannot ignore the intervening development of the group of petitions and LPAs being disposed of by the Division Bench of this High Court by its order dated 28th April 2004. As noted earlier, in the said order, it is specifically recorded that through a consensus between both the sides, the Government resolution listed at Item No.1 and 2 of the said order are agreed not to be relied upon either for admission or for fixing fee structures so far as the appellants therein were concerned. It was further observed that in view of the above consensus arrived at the effect that the State shall not rely upon the said resolutions for the academic year 2003-2004, either for admissions or for fixing the fee structures so far as appellants are concerned, the main petitions as well as the appeals would not survive. It is not in dispute that the present Institutions were parties before the High Court in those proceedings and were governed by the said observations of the Division Bench in the said order dated 28th April 2004. In clear terms before the Division Bench, it was agreed by the Government that the resolutions in question which included the Government resolutions dated 6.5.03 and 1.7.03 would not be relied upon either for admission or for fixing the fee structures so far as the appellants therein are concerned. The Division Bench has, as noted above, reiterated this position in para 2 of the order wherein it is found that in view of the consensus that the State shall not rely upon the said circulars for the academic year 2003-04, the main petitions as well as the appeals do not survive. The effect of this order is plain and simple. The Government for whatever reasons agreed not

to rely upon and implement the said circulars against the appellants before the High Court. The reasons and philosophy for agreeing not to implement those circulars are neither part of the record nor possible for me to examine in this litigation. The only fact that emerges from the said order is that for whatever reasons, the State Government agreed that the said circulars shall not be relied upon against the appellant Institutions for the purpose of fee structures as well as for grant of admission for the year 2003-04. Therefore, though having found that the courts below were not justified in granting the interim injunction on the basis of the material placed before the courts and though as noted above, I was not impressed by the reasoning adopted by the courts below for granting such interim injunction, the position in my view has materially changed by the interjection of the order dated 28th April 2004 passed by the Division Bench in the group of Letters Patent Appeal NO.862/03 and allied matters. In absence of the said order, as expressed above, I would have been inclined to interfere with the grant of interim injunction and the impugned orders. In view of the order dated 28th April 2004, however, it is not possible for me to interfere with the admissions granted by the Institutions and the order passed by the Courts below directing the University to enrol the students in question simply because the resolution by which the Government had prescribed the minimum passing of requirement of 45 per cent marks in the relevant subjects no longer exists at least qua the institutions involved in the present petitions. When the Government for whatever reasons has agreed not to press these resolutions for the purpose of fixing fee structures or for grant of admission, it would not be possible to uphold the contention of the petitioner that the admissions granted to the students should be nullified as in my view the minimum required standard of 45 per cent marks is not to be implemented against these institutions for the academic year 2003-04. I am unable to accept the contention of the learned advocate for the petitioner that the sole purpose of the group of petitions decided by the Division Bench was to challenge the validity of the fee structures set out by the State Government and the question of quota earmarked for the Management for grant of admissions and that, therefore, the order of the Division Bench should be viewed from such angle and it should be construed that the Government never intended to keep out the institutions from the rigours of having to admit those students who pass with a minimum of 45 per cent marks in the relevant subjects. In other words, it is contended that the minimum requirement of 45 per cent marks was never intended to be

done away with by the State Government even when adopting the stand before the Division Bench in the said group of petitions. There is nothing on record to enable me to accept this contention of the learned advocate for the petitioner. It is true that the effect of such a situation would that the students who did not fulfill the minimum required standard as laid down by the State Government would continue to prosecute their studies unhindered. This, however, cannot be helped. When the State Government itself which is the author of the Resolutions has for whatever reasons agreed not to press those resolutions against the Institutions in question for the academic year 2003-2004, there is no qualification in the agreement of the State Government before the Division Bench. The agreement is unqualified and unconditional. What is stated before the Division Bench is that those resolutions including the Government Resolutions dated 6.1.03 and 1.7.03 would not be relied upon either for admission or for fixing fee structures against the appellant-Institutions. The effect of this action is that the students concerned would have to be permitted to pursue their studies since the Government itself has decided not to insist on the minimum requirements of having to pass 45 per cent marks for the academic year 2003-04.

22. To conclude, though I find that the courts below were not justified in granting interim injunctions on the basis of the material available before the courts below, by virtue of the intervening circumstances, I am unable to interfere with the orders passed below and therefore the petitions are liable to be and are hereby rejected. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated.

23. By virtue of the interim orders passed by this Court on 31st August 2004, the Institutions concerned have deposited certain amounts before this Court. Now that both the petitions are rejected and interim relief is vacated, the Registry is directed to refund the said amount to the Institutions.

(Akil Kureshi, J.)
(vjn)